AMENDMENT

THIS AMENDMENT (this "**Amendment**") is entered into this 6th day of December, 2012, and is effective as of August 1, 2011, by and between **BOTTLING GROUP, LLC,** a Delaware limited liability company, and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company, with an office located at 1150 North Avenue, Fresno, CA 93725 ("**Pepsi**") and **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA on behalf of its Merced campus**, with its principal place of business at 5200 Lake Road, Merced, CA 95343 (the "**University**").

WHEREAS, Pepsi and the University are parties to a Beverage Partnership Agreement (the "Agreement") which commenced on September 1, 2005 and which expired on July 31, 2011 (the "Term"); and

WHEREAS, Pepsi and the University have been negotiating an extension to the Agreement and have decided it is in their respective best interests to extend the Term for a seven (7) year period on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of these premises and the covenants herein contained, it is hereby agreed that, as of the date set forth below, the Agreement is hereby amended as follows:

1. **Term.**

The parties acknowledge that the Term of the Agreement as described in Section 2 of the Agreement was completed as of July 31, 2011 and, the parties agree to amend the Agreement by adding the following at the end of Section 2: *"The Term of this Agreement is hereby renewed for a period of time commencing on August 1, 2011 and expiring July 31, 2018, or at such time as University's collective purchases of Products meets or exceeds a volume threshold (the "**Volume Threshold**") of 300,000 Gallons and Cases (the "**Renewal Term**"). For the purposes of measuring the Volume Threshold only, 1 Case of Packaged Product shall be deemed equal to 1 Gallon of Postmix Product. Thus, in the event the Volume Threshold is not met on or before July 31, 2018, then the Renewal Term shall automatically continue for the period of time necessary until the Volume Threshold has been met (the "**Automatic Extension**"). Except for applicable Commissions and Rebates, which may be earned during the Automatic Extension, Pepsi shall not provide any other consideration to Customer. When fully executed, this Agreement will constitute a binding obligation of both parties until expiration or termination."*

2. **Exclusive Beverage Availability Rights.**

The parties agree that Section 3(e) of the Agreement is deleted in its entirety and replaced with the following:

"(e) The following are the only permitted exceptions to Pepsi's exclusive Beverage rights on Campus:

(i) up to two shelves of Competitive Products may be made available for sale in non-Pepsi coolers placed in retail locations on Campus that may be used at University discretion; provided, however, that Pepsi's packaged Products shall be in prime positions and the space for Competitive Products shall be in the knee-to-floor space as determined by planograms agreed to in writing by Pepsi (at no time shall the shelf space for Competitive Products contain beverages manufactured or distributed by Coca-Cola Company or an affiliate thereof);

(ii) tap water, Bulk Water (i.e. 5-gallon "Office Cooler" water), freshly brewed hot coffee or hot tea, hot chocolate, juice squeezed fresh, smoothies and milkshakes freshly blended on premises, and any products used for academic research; and

(iii) student, faculty or administrative person who brings Beverages to the Facilities for personal consumption.

3. **Pricing and Products**.
The parties agree that the following sentence is hereby added to the end of Section 5(b): *"Annual price increases during the Renewal Term shall be limited to the annual increase in the Producer Price Index ("PPI"), Section 0262; provided, however, that Pepsi shall have the right to request an increase greater than the PPI increase in any Agreement Year in which Pepsi experiences an unforeseen, extraordinary increase in its cost of goods sold.*

4. **Consideration.**
The parties agree that Section 6 of the Agreement is deleted in its entirety and replaced with the following new Section 6:

"6. Consideration. In consideration of the exclusive rights granted to Pepsi during the Renewal Term Pepsi shall provide the University with the following:

*A. A initial sponsorship fee in the amount of Eighty Thousand Dollars ($80,000) due and payable to the University within sixty (60) days of the signing of Amendment by the parties (the "**Initial Sponsorship Fee**") The Initial Sponsorship Fee is earned by the University over the Renewal Term. In the event Pepsi terminates this Agreement due to the University's failure to cure a breach hereof, the unearned Initial Sponsorship Fee will be repaid to Pepsi pursuant to the terms of Section 14 of the Agreement.*

*B. An annual sponsorship fee, payable annually pursuant to the following (the "**Annual Sponsorship Fee**"):*

Year of Renewal Term	***Applicable Time Period***	***Amount***	***Due Date: within 45 days after:***
1	*August 1, 2011 – July 31, 2012*	*$35,000*	*Execution of Amendment by parties*
2	*August 1, 2012 – July 31, 2013*	*$35,000*	*July 31, 2013*
3	*August 1, 2013 – July 31, 2014*	*$40,000*	*July 31, 2014*
4	*August 1, 2014 – July 31, 2015*	*$40,000*	*July 31, 2015*
5	*August 1, 2015 – July 31, 2016*	*$50,000*	*July 31, 2016*
6	*August 1, 2016 – July 31, 2017*	*$50,000*	*July 31, 2017*
7	*August 1, 2017 – July 31, 2018*	*$50,000*	*July 31, 2018*

*C. An annual sustainability fund, payable annually pursuant to the following (the "**Annual Sustainability Fund**"):*

Year of Renewal Term	***Applicable Time Period***	***Amount***	***Due Date: within 45 days after:***
1	*August 1, 2011 – July 31, 2012*	*$10,000*	*Execution of Amendment by parties*
2	*August 1, 2012 – July 31, 2013*	*$10,000*	*July 31, 2013*
3	*August 1, 2013 – July 31, 2014*	*$10,000*	*July 31, 2014*
4	*August 1, 2014 – July 31, 2015*	*$10,000*	*July 31, 2015*
5	*August 1, 2015 – July 31, 2016*	*$10,000*	*July 31, 2016*
6	*August 1, 2016 – July 31, 2017*	*$10,000*	*July 31, 2017*
7	*August 1, 2017 – July 31, 2018*	*$10,000*	*July 31, 2018*

*D. **Commissions**, as a percentage of the actual cash ("cash in bag" or "CIB") collected by Pepsi from the Vending Machines placed at the Facilities, less any applicable fees or deposits ("Commissions"). Such Commissions shall be at the rate(s) set forth below (the "Commission Rate") and shall be calculated as follows:*

(CIB * Commission Rate) – applicable fees and deposits = Commissions due

Product	Minimum Vend Price	Commission Rate*
20 oz. Carbonated Soft Drinks	$1.50	30%
20 oz. Bottled Water	$1.50	30%
20 oz. Fruit Drinks	$1.75	30%
20 oz. Isotonics	$1.75	30%

*Commission Rate stated above shall only apply to Products sold by Pepsi through its Vending Machines at the beginning of the Term. If Pepsi proposes any new Products to the University during the Term, then Pepsi and the Customer shall mutually agree upon the Commission Rate and/or Minimum Vend Price for such new Product.

*(1) **Commissions Payment**. Commissions shall be remitted by Pepsi to the University within thirty (30) days of the end of each 4-week accounting period established by Pepsi. Pepsi shall make all pertinent revenue and sales records respecting the Vending Machines available to University. University agrees that it is responsible for reviewing such records and that any claim or dispute relating to the Commissions must be brought by University in writing within one (1) year of the date such Commissions payment is due.*

*(2) **Change to Commission Rate**. University acknowledges and agrees that Pepsi established the Commission Rate based on any applicable sales tax associated with the sale of the Products through the Vending Machines as of the commencement date of this Agreement. If, during the Term, applicable sales taxes should increase by more than five percent (5%), then Pepsi shall have the right to automatically reduce the Commission Rate by the same percentage amount."*

D. Each Year throughout the Term, Pepsi shall calculate the total applicable Cases of bottle Products purchased from Pepsi by the Customer and its Food Service Provider pursuant to this Agreement, and shall provide the Customer with rebates calculated based on applicable amounts set forth below (the "Rebates"). The Rebates shall be paid by Pepsi within sixty (60) days of the end of each applicable Year during the Term.

Rebate Amount	Applicable Products
$2.00/Case	24-pk Cases of Pepsi bottle Product

5. **Additional Consideration.**
The parties agree that Section 7 of the Agreement is deleted in its entirety and replaced with the following new Section 7:

"7. Additional Consideration. In addition to the consideration specified in Section 6, Pepsi shall provide the following additional consideration to the University:

A. Each Agreement Year during the Renewal Term, Pepsi will provide Product donations of up to a maximum of 1,800 cases of a combination of 12oz. cans of carbonated and non-carbonated beverages and 16.9 oz. bottles of Aquafina across all Campuses upon request of the University, provided however, that the University will administer all requests through a central contact so that the University may prioritize the request. Product donations not requested in any Agreement Year will not be carried over to a subsequent Agreement Year.

B. Pepsi will provide the Athletic Program a Sideline Program valued at up to Three Thousand Dollars ($3,000) per Year which will be used to offset the cost of Gatorade merchandise requested by Customer each Year (e.g. coolers, squeeze bottles, ice chests and 9 oz. cups).

C. Pepsi will work with the University to review waste reduction and recycling programs (including, but not limited to, minimization of plastic container use, recycled product use) and make ongoing operational sustainability improvements.

D. Pepsi shall endeavor to provide Products as soon as practicable, as well as provide reasonable assistance, upon University's request and depending on availability, in the event of natural disaster, pandemic, inclement weather, work stoppage, or other unforeseen events affecting the University's community. In the case of a local or national emergency, the University may need to request a three day supply of bottled water, isotonic beverages, and juices. Pepsi will help the University acquire these products within a reasonable time frame if at all possible."

6. **Equipment.** The following sentence is hereby added at the end of Section 9(a) of the Agreement: *When Equipment is replaced during the Term, Pepsi will provide the Customer with energy efficient and up-to-date models of equipment.*

7. **Sponsorship Fee Refund.**
The parties agree that Section 14 of the Agreement is deleted in its entirety and replaced with the following: *"If, during the Renewal Term, Pepsi terminates the Agreement due to the University's failure to cure a breach of the Agreement pursuant to the terms of Section 13, then without prejudice to any other rights or remedies available to Pepsi, the University will refund to Pepsi the unearned portions of the Initial Sponsorship Fee. The amount of such reimbursement shall be determined by multiplying the Initial Sponsorship Fee by a fraction, the numerator of which is the number of months remaining in the Renewal Term at the time such termination occurs and the denominator of which is 84."*

8. **Miscellaneous.**
Each party represents and warrants to the other that it has the authority to enter into and perform under this Amendment; and that the execution and performance under this Amendment will not violate any agreements with, or rights of, any third party. This Amendment may be amended or modified only by a writing signed by each of the parties. Except as may be expressly set forth herein, all terms and conditions of the Agreement shall remain in full force and effect. As used in this Amendment, capitalized terms defined in the Agreement and not otherwise defined in this Amendment, shall have the respective meanings assigned thereto in the Agreement.

IN WITNESS WHEREOF, Pepsi and Customer have caused this Amendment to be executed by the authorized persons set forth below.

BOTTLING GROUP, LLC	**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA on behalf of its Merced Campus**
By: Mark Giannini	By: Cindi Deegan
Name: Mark Giannini	Name: Cindi Deegan
Title: Key Account Manager	Title: Director of Purchasing
Date: 12/6/2012	Date: 12/07/12

UNIVERSITY OF CALIFORNIA MERCED
BEVERAGE PARTNERSHIP AGREEMENT

This Agreement is made effective as of **September 1, 2005** between Bottling Group, LLC doing business as The Pepsi Bottling Group, a Delaware limited liability company, having a place of business at **1150 North Ave. Fresno, CA 93725** ("PBG") and The Regents of the University of California on behalf of it's Merced campus, having its principal place of business at **5200 Lake Rd. Merced, CA 95343** (the "University").

RECITALS

A. PBG has submitted a bid in response to an invitation to bid issued by the University for the exclusive right to develop and carry out a program for the sale of its beverage products at each of the facilities owned, operated or controlled by the University.

B. PBG is experienced in installing, operating, servicing and maintaining equipment for dispensing beverage products and the University has determined that it is in the best interests of the University to contract with PBG to provide services for the sale of beverage products.

C. The parties desire to confirm the terms and conditions under which the University will contract with PBG to install, operate, service and maintain all equipment dispensing beverage products.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

1. Definitions.

(a) "Agreement Year" means each twelve-month period beginning with the first day of the Term.

(b) "Beverage" or "Beverages" means all nonalcoholic beverages including carbonated soft drinks and frozen carbonated and noncarbonated beverages, natural or artificially flavored fruit juices, fruit juice-containing drinks, and sweetened or unsweetened fruit-flavored drinks ("Fruit Drinks"), ready to drink tea products ("Teas"), ready to drink coffee products ("Coffees"), hypertonic, isotonic, hypotonic drinks, and energy and fluid replacement drinks ("Sports Drinks") and packaged waters. "Beverage" shall not include non shelf-stable, non-flavored fluid milk as currently defined by the USDA (i.e., milk beverages containing at least 6.5% non-fat milk solids), beer, coffee or hot chocolate.

(c) "Campus" means the entire premises of every school and facility owned, operated or controlled by the University, now or in the future, including all athletic facilities and

concession stands, and, for each building, the grounds, parking lots, dining facilities, athletic facilities and concession stands, food service outlets, and vending areas.

(d) "Cases" means the number of 24 Unit Cases of bottle and can Product ("B&C Product") purchased by the University from PBG.

(e) "Competitive Products" means any and all Beverages other than Products (as defined herein).

(f) "Gallons" means the number of gallons of postmix Product ("the Postmix Product") purchased by the University from PBG.

(g) "Products" shall mean Beverage products of PBG as currently distributed or which may be distributed by PBG.

(h) "Team" or "Team(s)" means all intercollegiate athletic teams associated with the University.

2. Term. The term of this Agreement will be for a period commencing September 1, 2005, and expiring at the end of the Agreement Year in which the University purchases of Gallons and Cases meets or exceeds **6,280** Gallons of Postmix Products and **37,700** Cases of Bottle & Can and Full Service Vending cases combined or ten years. Upon mutual agreement the University and PBG may extend this agreement for two additional one-year periods at terms and conditions satisfactory to both parties.

3. Exclusive Beverage Availability Rights.

The University hereby grants to PBG the following exclusive Beverage availability rights:

(a) PBG shall have the exclusive right to make Beverages available for sale and distribution on Campus, including the exclusive rights to install and operate all equipment that dispenses Beverages from any location on the Campus, to offer Products in all food service locations ("Food Service") and to provide all Beverages sold at athletic contests and sold at other locations on the Campus. Subject to the terms and conditions set forth in this Agreement, the University agrees that Products shall be the exclusive Beverages sold on the Campus.

(b) PBG shall have the exclusive right to install full service vending machines ("Vending Machines") and all other beverage dispensing equipment necessary to distribute the Products throughout the Campus. PBG shall have the further right to install additional Vending Machines in buildings and facilities acquired by the University after the date of this Agreement. *PBG shall install the Vending Machines at its sole expense. PBG shall have the right to place full* trademark panels on all sides of its Vending Machines and other dispensing equipment. The University and PBG shall mutually determine the quantity, placement and selling price of all vending on campus.

(c) The University shall purchase all Products and all cups, lids, straws and carbon dioxide directly from PBG.

(d) The University shall require that any Sports Drinks used by its Teams will be those Sports Drinks provided by PBG.

(e) The University reserves the right to offer Competitive Products for sale in coolers placed in retail locations on Campus, not to exceed two shelves of Competitive Products. Competitive Products may not be located in PBG's equipment. Outside Caterers and service providers for campus events that are not under the jurisdiction of the University may provide beverages other than those provided under this contract.

4. Sponsorship Rights.

(a) In the exercise of the rights granted to PBG under this Agreement, PBG shall have the right to use the University's trade names, trademarks, service marks (including stylized and proprietary marks) as well as any word, name, logo, color, design, emblem, insignia, symbol and any other distinctive indicia or combination thereof, now or hereafter used, applied for and/or registered by the University. Such use of the University's logo may be in connection with the Products, its packaging, point-of-sale materials, premium items, cups, apparel, print ads and other advertising materials and promotional activity developed by PBG pursuant to this Agreement. All such uses of the University's logo by PBG shall be subject to the prior approval of the University, such approval shall not be unreasonably withheld.

(b) During the Term, PBG shall have the right to display signage on Campus as mutually determined by PBG and the University. PBG shall provide all artwork for all signage on Campus, subject to the approval of the University, which shall not be unreasonably withheld. The installation, repair and maintenance of all PBG's signage shall be the responsibility of PBG.

5. Pricing and Products.

(a) Initial vend prices are as follows:
$0.75 – 12 oz. cans of carbonated soft drinks
$1.25 – 20 oz. bottles of carbonated soft drinks, juices, water and Gatorade
$2.50 – SoBe, Frappuccino and all energy drinks

Vending prices may be changed by mutual agreement of the parties, such agreement not to be unreasonably withheld. Vend Products will be mutually determined by the University and PBG.

(b) Current pricing for products purchased by the University under this agreement is set forth in attached Exhibit A. Prices are firm for the first three years of this Agreement. Following the initial three years, Prices are subject to change annually during the Term, upon a prior thirty (30) day written notice. Annual increases shall be limited to the annual increase in the Producer Price Index, Section 0262.

6. Consideration.

In consideration of the exclusive rights granted in this Agreement, PBG shall pay to the University the following:

(a) A sponsorship fee of **Thirty Thousand Dollars ($ 30,000)** due and payable **Thirty** (30) days from the signing of this Agreement.

(b) A sponsorship fee, payable annually commencing on the first anniversary date of the signing of this Agreement and each anniversary date thereafter as outlined:

September 2006 - $	**20,000**
September 2007 - $	**20,000**
September 2008 - $	**20,000**
September 2009 - $	**10,000**
September 2010 - $	**10,000**
September 2011 - $	**10,000**
September 2012 - $	**10,000**
September 2013 - $	**10,000**
September 2014 - $	**10,000**
Total $	**120,000**

(c) **Forty five** percent (**45%**) commissions on all cash collected by PBG from the Vending Equipment placed on the Campus, less any applicable sales tax and deposit ("Commission"). Commission payments are to be made by check within thirty (30) days following the end of each four-week period during the Term, payable to "The Regents of the UNIVERSITY of California," and mailed to UC Merced, Monir Ahmed, Director of Business and Financial Services, PO Box 2039, Merced, CA 95344. An itemized breakdown of collections by campus location, and product description *must* be included with each payment. In accounting for commissions, a breakdown of machines by location with appropriate sales, sales by category, commission by category, and product commission total, must be provided with each commission check. For any commissions that may be collected in campus cards funds, (for campus debit card sales), the University and PBG shall create a mutually agreeable audit system and commission payment schedule.

(d) A payment of $ **2.00** times the total number of Cases purchased by the University from PBG each Agreement Year during the Term of this Agreement (product rebate). Product rebates will not be calculated on Full Service Vending Cases. Case volume to be calculated starting August 1 to July 31 each year. Payment is due in September of each Year.

7. Additional Consideration.

In addition to the consideration specified in Section 6 above, PBG shall provide the following further consideration to the University.

(a) PBG will provide annual Product donations of 12oz cans or 16.9 Aquafina up to a total of **1,000** cases per Agreement Year across all Campuses upon request of the University, provided however, that the University will administer all requests through a central contact so that the University may prioritize the requests.

(b) In the event UC Merced brings on an Athletic Program during the Term, PBG will provide the Athletic program **200** additional cases of 16.9 Aquafina water per year.

(c) In the event UC Merced brings on an Athletic Program during the Term, PBG will provide the Athletic Program a Sideline Program consisting of 4- 10 gallon coolers, 50-squeeze bottles, 4- ice chest and 5 cases of 9oz cups.

8. Competitive Products.

During the entire Term of this Agreement:

(a) No Competitive Products shall be sold anywhere on the Campus except as provided in Section 3(e) herein; and

(b) University shall not permit any permanent advertising, signage or trademark visibility for Competitive Products shall be displayed anywhere on the Campus, including locker rooms, sidelines and players benches; and

(c) No agreement will be entered into or maintained by the University pursuant to which Competitive Products will be associated with the University or the Campus in any advertising or promotional activity that creates a relationship or connection between Competitive Products and the University, Campus, schools or Teams.

9. Equipment

(a) PBG shall place equipment based on the needs of the University as mutually determined by the University and PBG, and replace all current beverage vending and dispensing equipment located on the Campus that is not identified as equipment of PBG with state- of-the-art beverage vending and dispensing equipment owned by PBG ("Equipment") as indicated in PBG's proposal.

(b) All Equipment, and all monies and product located in the vending machines, will continue to be the property of PBG or one of its affiliates throughout the Term. PBG shall install the Equipment at its own expense.

(c) Campus (Debit) Card System

Vending machines provided by PBG must be modifiable to accommodate both coin operations and the University's campus card system, (Diebold/Cbord). However, some machines may be left as coin operated only. The University, at its own expense, will coordinate procurement of card reader equipment for any machines that the University desires to have campus card debit capability. PBG shall install, at University's expense, the interface kits, interface cables and flexible conduit between the vending machines and data lines. University may use the proceeds of the Product rebates set forth in Section 6(d) herein to purchase the debit card readers. PBG shall work with the UNIVERSITY to insure that the installation, when completed, will function with the UNIVERSITY system. PBG will not be responsible for any transaction or maintenance fees on the debit card readers affixed to its vending machines. The University shall arrange for the collection of monies from debit card transactions on vending machines equipped with debit card readers. Once each four week accounting period during the term (as established by PBG), University will remit payment to PBG for the monies collected through debit card readers along with a report detailing all related Product sales.

(d) The number of machines may be increased or decreased according to need as mutually determined by University and PBG. Each such action shall be covered by a written change order from the UNIVERSITY'S Purchasing Department.

(e) All equipment shall have signs with directions for service calls, as well as a local phone number to call in the event service is needed or refunds required.

(f) During the Term and at no cost to the University, PBG will service and stock, if necessary, (i) the Equipment, (ii) any additional equipment determined by the parties to be installed at new locations on the Campus, and (iii) any additional equipment hereafter installed by PBG based on the needs of the Equipment (i.e. volume/velocity of asset) and in accordance with PBG's Full Service Vending Agreement.

(g) The Equipment may not be removed from the Campus without PBG's written consent, and the University agrees not to encumber the Equipment in any manner or permit other equipment to be attached thereto except as authorized by PBG. Using reasonable efforts, the University will keep the Equipment free of all advertisements and other University materials. At the end of the Term, PBG shall have the right, and shall upon request of the University, remove all Equipment from the Campus at no expense to the University.

(h) All equipment furnished is to be maintained in operating condition throughout the period of the contract. PBG's service of the Equipment will be provided Monday through Saturday, 7:30 am to 5:00 pm at no charge to the University, Service on Sunday will be only for emergencies and at no charge to the UNIVERSITY. PBG will not be obligated to provide service during periods in which it is prevented from doing so due to strikes, civil disturbances, unavailability of parts or other causes beyond the control of PBG, and shall not be liable for damages of any nature arising out of delays in rendering service.

(i) Response time to service calls shall be twenty-four (24) hours or less.

10. Product Stocking.

The University shall permit PBG, its employees, agents and representatives to enter the schools and other University facilities for purposes of servicing and stocking the Vending Machines, coolers and fountain equipment during normal school hours.

11. Refunds

PBG shall provide and maintain one (1) petty cash refund system to reimburse customers for coins lost by machine malfunctions.

12. UNIVERSITY Rights Concerning Product and Service

The UNIVERSITY reserves the right to have designated representative's review, inspect, evaluate, and recommend changes in the operation and condition of the services at any time, and generally with respect to safety and maintenance of the equipment, all of which shall be maintained at levels satisfactory to UNIVERSITY.

13-4. Contract Termination

(a) Either party may terminate this Agreement for cause, which shall include, without limitation, a material breach of this Agreement; provided, however, that the terminating party has given the other party written notice of the breach or other cause and the other party failed to remedy or cure the breach or other cause within thirty (30) days of such notice.

(b) Either party may terminate this Agreement if the other party violates or fails to abide by existing laws, codes, rules or regulations set forth by all appropriate authorities having jurisdiction in the location where this work is to be performed; provided, however, that the terminating party has given the other party written notice of the violation and the other party failed to remedy or cure the violation within thirty (30) days of such notice.

14. Sponsorship Fee Refund

It is understood between the parties that the total amount of Sponsorship Fees ($150,000) are based on a ten (10) year commitment. The Sponsorship Fees are earned by UNIVERSITY at the rate of $15,000 per Year. If the UNIVERSITY breaches this Agreement or terminates the agreement as provided for herein, the UNIVERSITY will repay PBG the unearned portion of any advanced Sponsorship Fee payment. Such reimbursement shall be determined by multiplying advanced Sponsorship Fee payment by a fraction, the numerator of which is the number of months remaining between the time the Agreement is terminated and August 31, 2015 and the denominator of 120.

15. Insurance Requirement

PBG shall maintain, throughout the term of its performance of the Contract and any extension thereof, a policy of automobile, general liability insurance, fire legal liability and broad form property damage liability including an endorsement to the General Liability coverage, and completed operations coverage, with limits of liability <u>not less than $1,000,000 each occurrence and $2,000,000 general aggregate</u> for bodily injury and property damage, and Workers' Compensation Insurance in accordance with the Labor Code of the State of California covering all PBG's employees providing service under the Contract. PBG shall cause its insurers to endorse PBG's policy to name the "Regents of the UNIVERSITY of California, its officers, agents, and employees" as additional insured for liability arising out of PBG's performance of the contract, and providing for 30 days prior written notice to the UNIVERSITY of cancellation of PBG's insurance. No later than ten (10) business days prior to PBG beginning performance of the Contract, PBG shall provide UNIVERSITY's Purchasing Department with a certificate of insurance evidencing that the above insurance coverage are in full force and effect. If any of PBG's insurance is written on commercial claims made form, such insurance coverage shall survive for a minimum of three (3) years following termination or completion of the Contract.

16. Indemnification

PBG will indemnify and hold the UNIVERSITY harmless from any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) arising out of: (i) its breach of any term or condition of this Agreement; (ii) product liability suits resulting from the use or consumption of the Beverage Products; and/or (iii) the negligence or willful misconduct of PBG.

UNIVERSITY will indemnify and hold PBG, its subsidiaries, affiliates or assigns harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys'fees) arising out of: (i) its breach of any term or condition of this Agreement; and/or (ii) the negligence or willful misconduct of the UNIVERSITY.

17. <u>Notices.</u>

Any notices or other communication hereunder shall be in writing, shall be sent via registered or certified mail, and shall be deemed given when received.

If to PBG:

The Pepsi Bottling Group
Attention: **Robert Buerger**
1150 North Ave.
Fresno, CA 93725

If to the University:

UC Merced
Attention: **Cindi Deegan**
Campus Purchasing
1715 Canal Street
Merced, CA 95340

18. Relationship of Parties.

(a) The parties are acting herein as independent contractors and independent employers. Nothing herein shall create or be construed as creating a partnership, joint venture or agency relationship between any of the parties and no party shall have the authority to bind the other in any respect. PBG and any person employed by or conducting business with the University shall not be a partner, employee, agent or joint venturer of the University. The sole relationship of the parties hereto created by this Agreement is that of licensor and licensee.

(b) No goods or equipment shall be purchased in the name of the University by PBG or any person employed by or conducting business with PBG nor shall any goods or equipment be purchased by the University in the name of PBG. No debts, liabilities, obligations or contracts of whatever kind made or incurred by either of the parties hereto or any person employed by or conducting business with said party shall be in the name or upon the credit of the other party, and the other party shall not be liable or responsible therefor.

19. Retention of Rights.

The University shall not obtain by virtue of this Agreement, any right, title or interest in the trademarks of PBG nor shall this Agreement give the University the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks or copyrights of PBG.

20. Representations and Warranties.

(a) Representations and Warranties of University. University represents and warrants to PBG as follows:

(1) University has full power and authority to enter into this Agreement and to grant and convey to PBG the rights set forth herein.

(2) All necessary approvals for the execution, delivery and performance of this Agreement by University have been obtained and this Agreement has been duly executed and delivered by University and constitutes the legal, valid and binding obligation of University enforceable in accordance with its terms, and nothing contained in this Agreement infringes upon the rights of any third party.

(b) Representations and Warranties of PBG. PBG represents and warrants to University as follows:

(1) PBG has full power and authority to enter into and perform this Agreement.

(2) All necessary approvals for the execution, delivery and performance of this Agreement by PBG have been obtained and this Agreement has been duly executed and delivered by PBG and constitutes the legal, valid and binding obligation of University enforceable in

accordance with its terms, and nothing contained in this Agreement infringes upon the rights of any third party.

21. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

22. Entire Agreement.

(a) This document and the documents listed below, in order of governance are intended by the parties as the final and binding expression of their agreement and is a complete and exclusive statement of the terms thereof and supersedes all prior negotiations, representations, and agreements and no representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

1. This contract document as accepted in writing by both parties.
2. University of California RFP# UCM028CD dated April 6, 2005 and all attachments and addenda thereof.
3 PBG Beverage Partnership Proposal dated May 13, 2005 and subsequent modification/ Best and Final Offer.

(b) No modification or waiver of any of the terms and conditions of this Agreement shall be effective unless such modification or waiver is expressed in writing and signed by each of the parties. This Agreement may be amended only in writing signed by each of the parties. No course of prior dealings between the parties and no use of trade shall be relevant or admissible to supplement, explain or vary the terms of this Agreement, whether the same be consistent with the terms of this Agreement or otherwise.

23. Assignment: Binding Nature; Multiple Originals.

To the extent permitted by law, this Agreement shall be binding upon and inure to the benefit of the PBG and the University and their respective successors and permitted assigns. Neither party may subcontract or assign its rights or obligations under this Agreement to any other entity or person without the express written consent of the other, which consent may be withheld at its sole discretion. Notwithstanding the foregoing, PBG shall be entitled to assign its rights and obligations under this Agreement pursuant to the sale of substantially all of its assets. No waiver by any party of any default or non-performance shall be deemed a waiver of any subsequent default or non-performance.

24. Savings Clause.

If any provision of this Agreement shall be deemed or declared unenforceable, invalid or void, the same shall not impair any of the other provisions contained herein which shall continue to be enforceable in accordance with their respective terms, except that this clause shall not deprive any party of any remedy afforded under this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date first above written.

PEPSI BOTTLING GROUP, LLC

By: R. Buerger
Name: **Robert Buerger**
Title: **Key Account Manager- Education**
Date: 03-01-06

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ON BEHALF OF IT'S MERCED CAMPUS

By: Cindi Deegan
Name: **Cindi Deegan**
Title: **Purchasing Director**
Date: 03-01-06